Filed 8/31/06 In re Eric E. CA1/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re ERIC E., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. ERIC E., Defendant and Appellant.	A111765 (San Francisco County Super. Ct. No. JW-05-6249)

Following denial of defendant's motion to suppress evidence, he admitted an allegation that he possessed a pellet gun on school grounds (Pen. Code, § 626.10, subd. (a)). Defendant renews his challenge to the search of his backpack by school authorities in this appeal. We conclude that the search of defendant and his backpack was based upon reasonable grounds and affirm the judgment.

STATEMENT OF FACTS

The material facts before us are essentially undisputed. About 8:00 a.m. on April 15, 2005, "a very scared student, who wished to remain anonymous" approached a

teacher at Mission High School to report that another student, Daryl,[1] had exhibited to him "a blue steel gun and bullets in his backpack." The student was fearful that the gun "was on campus." No further details of the incident were provided by the student.

Without divulging the name of the student, the teacher immediately conveyed this information to Dean Jorge Melgoza and then to Assistant Principal Marcus Blacksher. School Resource Officer Angela Rodriguez was told of the report of a "student possibly having a gun" by Dean Melgoza. Other security officers at the school were also advised to "keep your eye out for Daryl" and "bring him into the dean's office" if he was located.

Melgoza and Blacksher looked for Daryl in his gym class, and checked his locker, but discovered neither Daryl nor the gun. Later that morning, someone reported to Officer Rodriguez "on a walkie-talkie school radio" that Daryl had been seen at the "18th and Church side of the school." Officer Rodriguez and Juan Garcia, an employee in the dean's office, drove in a patrol vehicle to the area of 18th and Church or Dolores to search for Daryl. As they drove by the football field on Dorland Street they observed Daryl and "three other students," one of them defendant, inside the fence "on school property, but outside the building." The students appeared to be "looking for a door to get inside" the building, and were "speaking to each other," but were not seen attempting to conceal anything or passing any objects among themselves.

Garcia approached the students and asked if they had "passes," as required by school rules to be out of class. They all replied no. All of the students were "out of class" without passes, and "were with Daryl," who was the "main student" the school officials "were looking for," so Garcia escorted them all "to the dean's office."

The students were interviewed by Blacksher and Melgoza, to "find out what they were doing cutting and to see if any of them had a weapon." Dean Melgoza "smelled weed," but "none of them admitted that they had it." Daryl was then searched first and no gun was found. All of the other students were then directed by Blacksher to individually empty their pockets and backpacks. A pellet gun was found wrapped in a

[1] For the sake of confidentiality, we will refer to the students by their first names.

gray sweatshirt taken from inside defendant's backpack. Officer Rodriguez immediately seized the gun, although she realized it was a "pellet gun with plastic pellets" rather than the "blue steel gun" reported earlier by the student.

After receiving his *Miranda* rights from Officer Rodriguez, defendant agreed to give a statement. He stated that he found the pellet gun at 16th and Church while he was "walking to school," and put it in his backpack. He subsequently wrote a routine "What Happened statement" for school officials that was consistent with his oral account of the incident.

DISCUSSION

Defendant argues that the warrantless search of his backpack was undertaken without adequate cause. He complains that the search was conducted "solely because he had been seen with Daryl," and the "brief association" did not provide the requisite "reasonable grounds" to believe he was in possession of a gun. Defendant requests that we suppress both the seizure of the pellet gun and the subsequent statements he made to school officials.

" ' "An appellate court's review of a trial court's ruling on a motion to suppress is governed by well-settled principles. [Citations.] [¶] In ruling on such a motion, the trial court (1) finds the historical facts, (2) selects the applicable rule of law, and (3) applies the latter to the former to determine whether the rule of law as applied to the established facts is or is not violated. [Citations.] 'The [trial] court's resolution of each of these inquiries is, of course, subject to appellate review.' [Citations.] [¶] The court's resolution of the first inquiry, which involves questions of fact, is reviewed under the deferential substantial-evidence standard. [Citations.] Its decision on the second, which is a pure question of law, is scrutinized under the standard of independent review. [Citations.] Finally, its ruling on the third, which is a mixed fact-law question that is however predominantly one of law, . . . is also subject to independent review." [Citation.]' [Citations.]" (*People v. Carter* (2005) 36 Cal.4th 1114, 1140.)

We begin our analysis of the validity of the search with recognition of the principle that, "Public school officials are government agents within the purview of the

Fourth Amendment. [Citation.] Therefore, their conduct is subject to the constitutional rights of their students against unreasonable searches and seizures." (*In re Lisa G.* (2004) 125 Cal.App.4th 801, 805.) The seizure of defendant's backpack and its contents by school officials was a search that must comply with Fourth Amendment standards. (*New Jersey v. T. L. O.* (1985) 469 U.S. 325, 333-336 (*T. L. O.*).)

"The Fourth Amendment does not proscribe all searches, but only those that are unreasonable." (*People v. Hall* (2002) 101 Cal.App.4th 1009, 1022; see also *Maryland v. Buie* (1990) 494 U.S. 325, 331; *Baughman v. State of California* (1995) 38 Cal.App.4th 182, 190.) " 'The touchstone of the Fourth Amendment is reasonableness. [Citation.] The Fourth Amendment does not proscribe all state-initiated searches and seizures; it merely proscribes those which are unreasonable.' [Citation.]" (*People v. Jenkins* (2000) 22 Cal.4th 900, 971.) "If the search is reasonable, there is no constitutional problem, for the Fourth Amendment only protects individuals from unreasonable searches and seizures. [Citation.] Determining whether a search is reasonable ' "depends on all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself," ' [citation] . . . ." (*United States v. Sczubelek* (3d Cir. 2005) 402 F.3d 175, 182.) "Under the Fourth Amendment and the parallel search and seizure clause of the California Constitution (art. I, § 13), the reasonableness of particular searches and seizures is determined by a general balancing test 'weighing the gravity of the governmental interest or public concern served and the degree to which the [challenged government conduct] advances that concern against the intrusiveness of the interference with individual liberty.' [Citation.]" (*Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal.4th 1, 29-30, fn. omitted; see also *Delaware v. Prouse* (1979) 440 U.S. 648, 654; *People v. Ledesma* (2003) 106 Cal.App.4th 857, 863.)

Several factors are examined to determine whether an intrusion amounts to an unreasonable search or invasion of privacy rights: "(1) the individual's interest, (2) the government's interest, (3) the necessity for the intrusion, and (4) the procedure used in conducting the search. To assess the first factor, the court looks to a hierarchy of privacy interests. Reasonable expectations of privacy that society is prepared to recognize as

legitimate receive the greatest level of protection; diminished expectations of privacy are more easily invaded; and subjective expectations of privacy that society is not prepared to recognize as legitimate have no protection." (*People v. Reyes* (1998) 19 Cal.4th 743, 751; see also *Wainwright v. Superior Court* (2000) 84 Cal.App.4th 262, 267-268.)

"Although reasonableness in most criminal cases depends on the government's obtaining a warrant supported by probable cause, the Supreme Court has emphasized 'the longstanding principle that neither a warrant nor probable cause, nor, indeed, any measure of individualized suspicion, is an indispensable component of reasonableness in every circumstance.' [Citations.]" (*Padgett v. Donald* (11th Cir. 2005) 401 F.3d 1273, 1277; see also *People v. Reyes*, *supra*, 19 Cal.4th 743, 751.)

While the United States Supreme Court in *T. L. O.* recognized that under the Fourth and Fourteenth Amendments students have legitimate expectations of privacy in the belongings they bring to school, the court also emphasized that the state has a substantial interest in maintaining a proper educational environment for the schoolchildren entrusted to its care: "Even in schools that have been spared the most severe disciplinary problems, the preservation of order and a proper educational environment requires close supervision of schoolchildren, as well as the enforcement of rules against conduct that would be perfectly permissible if undertaken by an adult." (*T. L. O.*, *supra*, 469 U.S. 325, 339.) Further, while at school a minor "can hardly be said to be free to continue on his or her way. 'Traditionally at common law, and still today, unemancipated minors lack some of the most fundamental rights of self-determination—including even the right of liberty in its narrow sense, *i.e.*, the right to come and go at will. They are subject, even as to their physical freedom, to the control of their parents or guardians.' [Citation.] Although the high court has rejected the notion that public schools, like private schools, exercise only parental power over their students, the power that public schools do exercise is nonetheless 'custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults.' [Citation.]" (*In re Randy G.* (2001) 26 Cal.4th 556, 562.) A state has a "compelling interest" in assuring that the schools meet the responsibility of maintaining discipline and order to protect

students from mistreatment and violence. (*Id.*, at pp. 562-563.) "To respond in an appropriate manner, ' "teachers and school administrators must have broad supervisory and disciplinary powers." ' [Citations.]" (*Id.*, at p. 563.)

Thus, in *T. L. O.*, "the Supreme Court recognized an exception to the warrant and probable cause requirement for searches conducted by public school officials. The Supreme Court balanced the privacy interests of the students against 'the substantial need of teachers and administrators for freedom to maintain order in the schools' and concluded a search of a student would be justified at its inception 'when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of school.' [Citation.] The United States Supreme Court further stated: '[s]uch a search will be permissible in its scope when the measures adopted are reasonably related to the objectives of the search and not excessively intrusive in light of the age and sex of the student and the nature of the infraction.' [Citation.]" (*In re Joseph G.* (1995) 32 Cal.App.4th 1735, 1739.) Searches of students at schools "are part of a larger body of law holding that 'special needs' administrative searches, conducted without individualized suspicion, do not violate the Fourth Amendment where the government need is great, the intrusion on the individual is limited, and a more rigorous standard of suspicion is unworkable." (*In re Latasha W.* (1998) 60 Cal.App.4th 1524, 1527.)

Nevertheless, "There must be articulable facts supporting that reasonable suspicion. Neither indiscriminate searches of lockers nor more discreet individual searches of a locker, a purse or a person . . . can take place absent the existence of reasonable suspicion." (*In re William G.* (1985) 40 Cal.3d 550, 564, see also *In re Lisa G., supra,* 125 Cal.App.4th 801, 806.) " '[T]his standard requires articulable facts, together with rational inferences from those facts, warranting an objectively reasonable suspicion that the student or students to be searched are violating or have violated a rule, regulation, or statute. [Citations.] The corollary to this rule is that a search of a student by a public school official is unlawful if predicated on mere curiosity, rumor, or hunch.' " (*In re Joseph G., supra,* 32 Cal.App.4th 1735, 1740, quoting from *In re William G.,*

supra, at p. 564.) However, " 'Reasonable suspicion' is a lower standard than probable cause. Ultimately, the legality of the search 'depend[s] simply on the reasonableness, under all the circumstances, of the search.' [Citations.]" (*In re Cody S.* (2004) 121 Cal.App.4th 86, 91-92, fn. omitted; see also *In re William V.* (2003) 111 Cal.App.4th 1464, 1469.)

The circumstances of the present case began with information that demanded the utmost level of prompt attention and scrutiny from school officials: a report from an unidentified student that Daryl was carrying a gun and bullets in his backpack at school. Although the student who reported Daryl's possession of the gun remained anonymous, the informant was known to the teacher, acted as a citizen informant out of concern for the consequences of the presence of a gun at school, and thus could be considered a reliable source of information. (See *People v. Bennett* (1998) 17 Cal.4th 373, 390; *People v. Coulombe* (2000) 86 Cal.App.4th 52, 59; *People v. Stanley* (1999) 72 Cal.App.4th 1547, 1554-1555; *In re Joseph G., supra*, 32 Cal.App.4th 1735, 1741.) Presented with a credible report that a student possessed a firearm, the school officials "charged with the safety of their students" properly considered the incident "very serious" and prudently undertook an immediate and thorough investigation. (*In re Joseph G., supra*, at p. 1742.) "The need of schools to keep weapons off campuses is substantial. Guns and knives pose a threat of death or serious injury to students and staff." (*In re Latasha W., supra,* 60 Cal.App.4th 1524, 1527.) The " 'gravity of the danger posed by possession of a firearm or other weapon on campus was great . . . .' [Citation.]" (*In re Joseph G., supra,* at p. 1741.)

The officials looked for Daryl in his scheduled class and searched his locker without any success. Another report was received several hours later that Daryl was off campus. When Daryl was observed shortly thereafter he was with a group of three other students that included defendant. The interval between the receipt of the gun-possession report and the detention of Daryl and his companions did not in the least render the information stale. (*In re Joseph G., supra*, 32 Cal.App.4th 1735, 1741.) All four of the students in the group were out of class without passes in violation of school rules. They

were seen conversing and attempting to gain entrance together into a school building, which indicated they were friends who seemed to be acting in concert. Once the group was escorted to the dean's office, because they had been "outside" the school premises, the school officials acted according to "policy" by going "through their backpacks to see if they have anything that they are not supposed to have." Dean Melgoza smelled marijuana, although none of the students "admitted that they had it."

Thus, the school officials did not act solely on the basis of the report of Daryl's gun possession. Following the report, additional articulable facts provided a reasonable basis for the search. School officials were aware that Daryl, defendant, and two other students had violated school rules by leaving school grounds, and believed one of them might be in possession of drugs. (*T. L. O., supra*, 469 U.S. 325, 345.) Although they realized Daryl was the student "suspected or thought" to have a weapon, the four students were seen "together" and Assistant Principal Blacksher expressed legitimate concern that Daryl "may have passed it off" to defendant or one of his other companions. Further, Daryl was "searched first," and no gun was found in his possession or previously in his locker, which enhanced suspicion that "maybe one of the other boys had the gun." Given the most grievous risk to the safety and welfare of the students represented by gun possession, the highest order of governmental interest to maintain order and protect students in the school, the reduced expectation of privacy of the students who had impermissibly been off campus, and the comparatively minimally intrusive brief examination of the contents of the defendant's backpack, we are convinced the search

was reasonable under all the circumstances. (*In re Joseph G., supra,* 32 Cal.App.4th 1735, 1742.)

Accordingly, the judgment is affirmed.

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Swager, J.

We concur:

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Marchiano, P. J.

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Margulies, J.